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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 William Enriquez,

10 Plaintiff,

11 v.

12 Gemini Motor Transport LP,

13 Defendant.
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No. CV-19-04759-PHX-GMS

ORDER

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16 Pending before the Court is Defendant Gemini Motor Transport's Motion to
17 Disqualify Plaintiff's Counsel. (Doc. 64.) In his response to Defendant's motion, Plaintiff
18 also seeks sanctions pursuant to 28 U.S.C. § 1927 and the Court's inherent authority.
19 (Doc. 75.) For the following reasons, both requests are denied.

20 **DISCUSSION**

21 **I. Legal Standard**

22 Because of their potential for abuse, disqualification motions are subjected to "strict
23 scrutiny." *See Optyl Eyewear Fashion Int'l Corp. v. Style Cos.*, 760 F.2d 1045, 1050 (9th
24 Cir. 1985). "The burden is on the party seeking to disqualify opposing counsel to
25 demonstrate that disqualification is necessary." *Mardian Equip. Co. v. St. Paul Ins. Co.*,
26 No. CV05-2729-PHX-DGC, 2006 WL 798881, at *1 (D. Ariz., Mar. 28, 2006) (citing
27 *Amparano v. Asarco, Inc.*, 208 Ariz. 370, 377, 93 P.3d 1086, 1093 (Ct. App. 2004)). The
28 moving party must show "sufficient reason" for the attorney to be disqualified. *Amparano*,

208 Ariz. at 377, 93 P.3d at 1093.

“The standards for disqualification of an attorney . . . derive from the applicable disciplinary rules.” *Optyl Eyewear*, 760 F.2d at 1048. This Court applies the Arizona Rules of Professional Conduct to evaluate the conduct of attorneys admitted or authorized to practice before it. LRCiv 83.2(e); *Roosevelt Irrigation Dist. v. Salt River Project Agric. Improvement & Power Dist.*, 810 F. Supp. 2d 929, 944 (D. Ariz. 2011). Arizona courts have specified that disqualification of an attorney is an extreme remedy; courts rarely interfere with the attorney-client relationship. *Alexander v. Superior Ct.*, 141 Ariz. 157, 161, 685 P.2d 1309, 1313 (1984). Indeed, the Preamble to the Arizona Rules of Professional Conduct states that a violation of an ethical rule “does not necessarily warrant any other non-disciplinary remedy, such as disqualification of a lawyer in pending litigation.” Ariz. R. Sup. Ct. 42, pmbl. at 20. In general, the rules of professional responsibility are for “ethical enforcement and are not designed to be used as a means to disqualify counsel.” *Amparano*, 208 Ariz. at 376, 93 P.3d at 1092.

Ethical Rule (“ER”) 1.7 of the Arizona Rules of Professional Conduct provides that a concurrent conflict of interest exists if:

- (1) the representation of one client will be directly adverse to another client;
- or
- (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

ER 1.8 also regulates conflicts and specifies under what circumstances an attorney may accept payment from a third party on behalf of a client. Comment 10 explains that a conflict exists where “there is a significant risk that the lawyer’s representation of the client will be materially limited . . . by the lawyer’s responsibilities to the third-party payer.” Ariz. R. Sup. Ct. 42, ER 1.8, cmt. 10.

II. Analysis

A. Motion to Disqualify Plaintiff’s Counsel

Here, any conflict of interest between Mr. Coulter’s clients is speculative. Although

1 the rules counsel against simultaneous representation of clients with adverse interests, there
 2 is no categorical restriction against Plaintiff's counsel representing third-party witnesses.
 3 Certainly, in such circumstances, the very real possibility exists that the interests of a
 4 lawyers' clients will diverge during the course of their respective representations thus
 5 creating conflict(s). Thus, even assuming it is not categorically unethical, the practice here
 6 engaged in by Plaintiff's counsel should be disfavored. Nevertheless, at least under these
 7 circumstances it would invite abuse if sanctioned by disqualification.

8 Similarly, Defendant's speculation that the apparent absence of a fee agreement
 9 between Plaintiff's Counsel and third-party witnesses establishes that their fees are
 10 effectively being paid by Plaintiff, is unsupported by fact or law. ER 1.8 regulates
 11 arrangements where a third party affirmatively pays an attorney's fees. It does not pass
 12 judgment on the circumstance where no fee agreement is made. The mere potential for
 13 conflict does not so infect the litigation that it impacts Plaintiff's interest in the just and
 14 lawful determination of his claims. Accordingly, Defendant has not met its burden to show
 15 sufficient reason for Plaintiff Counsel's disqualification.

16 **B. Motion for Costs and Fees**

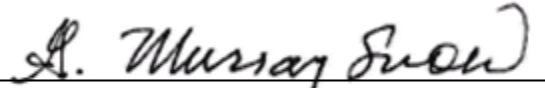
17 Pursuant to 28 U.S.C. § 1927, a district court has discretion to impose sanctions on
 18 an attorney who "multiplies the proceedings in any case unreasonably and vexatiously."
 19 Section 1927 sanctions must be supported by a finding of either "recklessness plus
 20 knowledge" or "subjective bad faith." *B.K.B. v. Maui Police Dep't*, 276 F.3d 1091, 1107
 21 (9th Cir. 2002). Such mental states are present when an attorney knowingly or recklessly
 22 raises a frivolous argument or argues a meritorious claim for the purpose of harassing an
 23 opponent. *Id.* n.8 (noting that defense counsel's frivolous argument satisfied both the
 24 reckless and knowing and subjective bad faith standards). A district court's inherent power
 25 to sanction likewise applies only where a court finds bad faith or conduct tantamount to
 26 bad faith. *Id.*

27 Plaintiff has failed to show that the motion to disqualify was filed in bad faith or for
 28 the purpose of harassment. The court therefore denies his request for sanctions.

1 **CONCLUSION**

2 **IT IS THEREFORE ORDERED** that Defendant Gemini Motor Transport's
3 Motion to Disqualify Plaintiff's Counsel (Doc. 64) is **DENIED**.

4 Dated this 12th day of August, 2021.

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6 G. Murray Snow
7 Chief United States District Judge
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